

IN THE
UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

IN RE:

CHINETTE SULLIVAN TURNER

Case No. 10-62560

Debtor

UNITED STATES OF AMERICA

Movant,

v.

CHINETTE SULLIVAN TURNER,

Debtor,

and

HERBERT L. BESKIN,

Trustee,

Respondents.

**MOTION OF THE UNITED STATES
FOR RELIEF FROM THE AUTOMATIC STAY**

COMES NOW THE UNITED STATES, on behalf of its agency, the Department of Agriculture, Farm Service Agency ("United States" or "FSA"), by and through its undersigned counsel, and pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule of Procedure 4001, hereby moves this court to enter an order granting the United States relief from the automatic stay in order that the United States may pursue remedies contained in its perfected security instruments which constitute a

lien against certain real estate and chattel property held by the debtor.

1. FSA is a creditor of the debtor in the total amount of \$300,513.70 as of the date of filing of the bankruptcy petition. **See** Claim No. 3-1 filed with the Court on November 18, 2010 and incorporated herein by reference ("the Claim").

2. The debt is evidenced by a promissory note dated August 3, 2010 in the amount of \$300,000.00. **See** Exhibit A.

3. As security for the debt, FSA holds a real estate deed of trust on debtor's real property located at 3427 Valentine Mill Road, Gordonsville, Virginia, 22942, and more particularly described in the Deed of Trust. **See** Exhibit B.

4. The deed of trust is dated August 3, 2010 and was recorded in the Clerk's Office of the Circuit Court of Louisa County, Virginia on the same date.

5. As security for the debt, FSA also holds a Security Agreement, perfected by Financing Statement, and a lien on the Certificate of Title for a vehicle for the 2005 Wells Cargo Trailer. **See** Exhibits C-1, C-2 and C-3.

6. As of October 24, 2011, the total unpaid balance owed to FSA is \$309,041.09, consisting of \$300,000.00 in unpaid principal and \$9,041.09 in interest. Interest accrues at the rate of \$20.5479 per day. **See** Affidavit of Indebtedness attached hereto as Exhibit D.

7. The real property is valued at \$242,000.00 per the real estate tax assessment.

8. The debtor's confirmed Chapter 13 plan provided that the debtor would make the regular contract payments, however, the debtor has not paid the \$3,227.00 payment which was due on December 21, 2010. There is another \$25,661.00 payment due to be paid on December 21, 2011. **See** Affidavit of Payments Received attached hereto as Exhibit E and incorporated herein by reference.

9. Debtor's failure to make the contract payment pursuant to the Promissory Note is a material default of the terms of the plan.

10. The failure of a Chapter 13 debtor to make post-confirmation, regular payments on a deed of trust constitutes other "cause" under Section 362(d)(1).

WHEREFORE, the United States moves this Honorable Court for the following relief:

- that the automatic stay, pursuant to 11 U.S.C. § 362 be lifted with respect to the secured collateral of the FSA described in its security instruments set out above, in order that FSA may pursue remedies contained in its perfected security instruments, including but not limited to foreclosure on its deed of trust secured by the debtor's real property set out in paragraph 3 above; and

- that the court grant such other further relief as it deems just and equitable.

Respectfully submitted,

TIMOTHY J. HEAPHY
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CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of October, 2011 electronically filed the foregoing MOTION FOR RELIEF FROM THE AUTOMATIC STAY with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Steven Shareff
Herbert L. Beskin

and mailed by first class mail, postage paid, a copy of the document to all of the parties listed on the Creditor Mailing Matrix filed with the Court.

/s/ Thomas L. Eckert
Thomas L. Eckert
Assistant United States Attorney